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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-953

EDWARD RONWIN, Petitioner,

v.

THE COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF THE STATE OF ARIZONA, Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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ARGUMENT

Respondent's Opposition Brief (hereinafter RBO) does not address itself to the three Questions Presented by Petitioner for review herein; rather, it may be taken as aimed at the "Question Reserved" by Petitioner. Nevertheless, a reply is appropriate so that the posture of the adversaries is mirrored in bold relief.

Distilled to its essentials, Respondent's argument is that all process below was "tidy", *ergo*, the decision of the Arizona Supreme Court must be correct. *Prima facie*, the process could have been "tidy"; yet, said decision could still be incorrect as a matter of law or as lacking in support by "clear and convincing" evidence or both. In fact, the process

below was deficient in "tidiness", as the ensuing comment reveals:

Respondent assures this Court that (RBO, p. 11, line 11), "At all stages in the proceeding on his application, petitioner was afforded due process". (See also, RBO, p. 10, line 7). Respondent also notes (RBO, p. 4, first paragraph), that Petitioner was notified by Respondent (notification letter is Appendix B, RBO) that it could not find Petitioner ". . . mentally and physically able to engage in active and continuous practice of law . . . ," and, therefore, denied Petitioner admission to the July, 1974 Bar examination and therewith the opportunity to qualify for said practice. What Respondent did not reveal to this Court is that said denial was made by Respondent *without giving Petitioner either prior notice or an opportunity to be heard*!

When Petitioner brought the matter to the Arizona Supreme Court's attention by way of a Petition for Writ of Special Action, Cause No. 11642 (of which this action is a continuation), said Court having before it (1) an admission by Bar counsel that Petitioner's Bar record had been cleared prior to Respondent's action (Item C.67. Tape of Special Action proceedings, July 30, 1974 of record transmitted to this Court), and (2) the fact of the aforesaid denial of due process, nevertheless, denied the Petition for Writ of Special Action. Further, in response to said Petition for Writ of Special Action, Respondent attached an affidavit to said response by the then chairman which contained the following explanation of Respondent's denial (p. 3, line 29 to p. 4, line 4 of said Affidavit):

> "On or about May 1, 1974, Dr. Ronwin filed in the office of the Clerk of the Superior Court of the State of Arizona a document entitled 'Petition for Review by the Supreme Court' [all in accordance with the rules of said Court] in which he alleged, among other things, that the Committee's action [setting Feb., 1974 Bar examination passing grades *after* the raw scores were determined] constituted a conspiracy in violation of Section 1 of the Sherman Act, and that the Committee 'under the color of statutes of this State and rules of this Court, conducted a discriminatory and vexing "investigation" of Dr. Ronwin'," (bracketted comment added).

In the next paragraph of said Affidavit, the Chairman averred (p. 4, lines 5-11):

> "On the basis . . . [of] the allegations above referred to of his 'Petition for Review by the Supreme Court,' I believed that the Committee could not appropriately find that he was mentally and physically able to engage in the active and continuous practice of law . . ."

Clearly, Petitioner's lawful exercise of his First Amendment right to the displeasure of said Chairman, was the reason that Respondent denied Petitioner the right to take the July, 1974, examination. Moreover, it defies reason to see any connection between an allegation that Respondent's procedure was violating the Sherman Act and the "mental and physical ability" to practice law, particularly in view of the fact that this Court seriously entertained the concept, *Goldberg v. Virginia State Bar*, 421 U.S. 773, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975).

The "two fellow students whom petitioner accused of defaming him by anti-semitic statements and signs . . . [and who] . . . denied vehemently that they were guilty . . ," (RBO, p. 8, lines 20-23), could hardly have been expected to do otherwise since that would have cast serious question on their moral caliber and, by the "Doctrine of Personality Disorders" brought into question herein by

Petitioner, on their "mental ability . . . to practice law." Suffice it to say that the Arizona Supreme Court accepted Petitioner's testimony that he had ". . . reason why each defendant [which included the two said students] was included in [Petitioner's] suit . . . ," (footnote no. 2, Decision of July 6, 1976). The Court may note that Dean Pedrick testified that he was ". . . pretty confident that the entire student body knew about [the anti-semitic harrassment]," (Reporter's Transcript, p. 100, lines 14-17, hearing Jan. 6-7, 1975 before Respondent; hereinafter, RT). Mr. Thomas Dugal, an attorney and a fellow student of Petitioner testified that the harrassment was a matter of general awareness among the law students (RT, p. 354, lines 22-25) (see also testimony of Mr. John Todd, RT, p. 328, line 25 to p. 329, line 14 and that of Mr. David Guthrie, RT, p. 297, lines 9-10 and p. 297, lines 20-22); yet, the aforesaid "two fellow students" saw no evil, heard no evil, spoke no evil.

Respondent attempts to portray a situation inferring that the testimony on Petitioner's mental ability was fairly in doubt so that one could opt in either direction (RBO, p. 8, line 26 to p. 9, line 3). That is hardly the case. The "persons who had been in law school with petitioner" (RBO, p. 8, lines 29-31) were the "two fellow students" discussed above. Three students mentioned above had no doubt that Petitioner was mentally able (RT, p. 331, line 20 to p. 332, line 9; p. 355, line 18 to p. 356, line 1; RT, p. 298, lines 11-17). They were joined by Dean Pedrick (RT, p. 127, lines 5-9 and Exh. 15 to RT, p. 64, line 1 to p. 65, line 1); and by Professor Berch (RT, p. 341, lines 8-17).

The list of the ". . . persons who had been former academic associates . . ." (RBO, p. 8, lines 31-32) and who

Respondent hoped would testify in its favor, is given in the paragraph marked "2.", p. 23, Appendix, RBO. Of said list, Dr. Rodemeyer did not testify. Dr. Meister testified that Petitioner ". . . worked effectively . . ." with him (Exh. 4 to RT, p. 6, line 15). Dr. Neil testified that Petitioner ". . . set high standards of professional behavior and ethics . . ." (Exh. 5 to RT, Written Ques. p. 3, line 31). No testimony was given by either Dr. Meister or Dr. Neil that Petitioner was mentally unable. The testimony of Dr. Lumry was withdrawn by Respondent (RT, p. 3-a and p. 182, line 7), because Dr. Lumry had refused to sign his deposition alleging error in his answers given to Bar counsel's question propounded to Dr. Lumry by a notary chosen by Bar counsel.

Dr. Olson had a *three week* contact with Petitioner *in 1958*. At the time, Dr. Olson was a medical student who just finished his first year (Exh. 2 to RT, Interrogs., p. 2, lines 15-20). In said contact, Petitioner was professor and Dr. Olson was the student hoping to acquire some biochemical experimental techniques. Dr. Olson was unable to perform certain chemical tests and, thereby, Petitioner brought the association to a close. Dr. Olson *never* performed a psychiatric examination of Petitioner (Exh. 2 to RT, Interrogs., p. 6, line 25 to p. 7, line 3) and admits that even now, as an M.D., he lacks expertise in psychiatry (Exh. 2 to RT, Interrogs., p. 6, line 2-9); yet, Dr. Olson flipped off the label of "paranoid" on Petitioner which not even the Bar's psychologist would do.

As to the ". . . practicing clinical psychologist with a Ph D degree and more than 20 years of professional experience . . ." (RBO, p. 9, lines 1-3), this Court is referred to the detailed analysis of the testimony of Dr. Encs in Petitioner's Memorandum of Points and Authorities, pp.

23-35, filed August 22, 1975 in the Arizona Supreme Court (Item C.3 of Certified records transmitted to this Court) and to the supporting references therein to RT. As an example from RT, p. 165-b, line 26 to p. 166, line 8:

> "Q. BY MR. DAUGHTON: Did those additional materials have any significance in your opinion so far as your overall evaluation of Edward Ronwin?
>
> A. I seriously consider every bit of information that I am privileged to look at, *but it did.not change my basic opinion and my basic discoveries.* It gave additional material to support my diagnosis. I saw nothing in there that would contraindicate (sic) the diagnosis I have formulated on November 19th." (Emphasis added.)

However, in direct contradiction of the denial, quoted above, that the material provided surreptitiously by Bar counsel had any effect on his change of conclusion from that in his written report (Exh. 9 to RT) that he could not make a statement as a result of his tests on Petitioner's mental ability to testimony at Respondent's hearing implying that Petitioner was "mentally unable", Dr. Enos testified (RT, p. 190, lines 13-19):

> "Q. In short, it is the materials which you were given which carry you over and make it possible for you to form the opinion which you have expressed, is that correct? *Without those materials, you couldn't do it*?
>
> A. *I think that is a fair statement, yes, sir.*" (Emphasis added.)

It is submitted that the above testimony is a clear example of unconvincing evidence by the *only expert* to testify favorably to Respondent's view herein.

In that same Memorandum of August 12, 1975, Petitioner reviewed the testimony on his behalf, too. In addition to the three students, now attorneys, and Dean Pedrick

and Professor Berch noted above, the Bar's M.D. - psychiatrist found Petitioner mentally able. He was joined by two M.D. - psychiatrists paid for by Petitioner. Moreover, four long time Arizona attorneys for whom Petitioner had done legal research testified that Petitioner was mentally able and five other Arizona attorneys, including Professor Dahl of the law school testified by affidavit that Petitioner was very "mentally able" (see pp. 52-64 of said Memorandum and references to RT therein).

Respondent insists that (RBO, p. 8, lines 15-20):

> ". . . Petitioner further asserts that, had he not stood up for his rights in the expression of repugnance to anti-Semitic slurs, he would now be a member of the State Bar of Arizona. There is no factual basis for either of these contentions . . ."

In the Decision of July 6, 1976, footnote no. 1, the Arizona Supreme Court took Petitioner to task for his "hypersensitivity and agressiveness" in attacking the anti-semitism at the law school and restricted such opposition to "normal repugnance". That pronouncement is itself a refutation of Respondent's claim, as is the quotation from the affidavit of Respondent's chairman, *supra.*

The posture of this case on the evidence comes well within this Court's statement in *Schwere v. Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 239, 77 S. Ct. 752, 756 (1957):

> ". . . Even in applying permissible standards, officers of a State cannot exclude an applicant *when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory . . .*"

But, whatever other deficiencies are contained in Respondent's Brief, the most glaring is the fact that no effort

was made therein to present "opposition" to the constitutional issues raised in the Petition for Writ of Certiorari. Wherefore, it is respectfully urged that said Petition should be granted.

Respectfully submitted,

By Edward Ronwin
Petitioner pro se

February, 1977.

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